

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8080 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DHANSUKHBHAI G THAKORE

Versus

STATE OF GUJARAT

Appearance:

MR PC MASTER for Petitioner
MR. S.P. DAVE, AGP, for Respondent No. 1
MR HARIN P RAVAL for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/04/99

ORAL JUDGEMENT

Amendment granted.

The petitioner is the elected Sarpanch of village Govali Gram Panchayat, Tal. Jaghadia of Dist. Broach. An FIR came to be lodged against him by the Talati-cum-Mantri of the same panchayat in respect of

alleged offences punishable under Sections 332, 504, 506(2), 114 of IPC and Section 135 of the Bombay Police Act. On basis of this FIR a show cause notice was served upon the petitioner by the District Development Officer to show as to why he should not be suspended in exercise of power vested in the District Development Officer under Section 59(1) of the Gujarat Panchayats Act, 1993. The petitioner gave a suitable reply and after granting an audience to him the District Development Officer passed an order under Section 59(1) of the Gujarat Panchayats Act suspending him from his office. The said order of the District Development Officer was taken in appeal before the Development Commissioner by the petitioner. The Development Commissioner also, after hearing the petitioner, confirmed the order passed by the District Development Officer. This order has given rise to the present petition by the petitioner under Articles 226 and 227 of the Constitution of India.

Mr. Master, learned advocate, appearing for the petitioner submitted that the Talati-cum-Mantri and the Sarpanch have been having conflicts because of the modus of functioning being not suitable to each other. He tried to emphasise to the fact that the Talati-cum-Mantri had made certain entries unauthorisedly and illegally which were being questioned by the petitioner as Sarpanch which was not liked by the Talati-cum-Mantri and as a counter-blast, the FIR was lodged by the Talati-cum-Mantri. The alleged incident took place on 1.3.1997 whereas the FIR is lodged on 3.3.1997. The offences alleged against the petitioner are not as such as can be said to involve moral turpitude. This aspect has not been taken into consideration either by the District Development Officer or by the Development Commissioner while passing the impugned orders. Mr. Master submitted that the petitioner had earlier made representations against conduct and unsatisfactory function of the Talati-cum-Mantri. All these factors have resulted into lodging of false FIR. These aspects have given rise to the present petition. Mr. Master has placed reliance on the following decisions

THAKORBHAI BHAGABHAI VS. D.D.O. SURAT reported in 1982
GLR 966

NARABHAI V CHAUDHARY VS. R.S. VAGHELA reported in
1997(1) GLR 599

PAWAN KUMAR VS. STATE OF HARYANA reported in AIR 1996 SC
3300

The criminal case is still pending and it will take its own time in getting decided. Mr. Master

submitted that if the decisions of this court are taken into consideration, it is required that the background of each case may be taken into consideration before deciding whether the act can be said to be involving a moral turpitude and whether the act is such as would call for suspension of an elected person. Therefore, he urged that the matter may be admitted and the order may be suspended.

On the other hand Mr. Raval, learned Advocate, appearing for respondent panchayat submitted that the petitioner is admittedly an educated person. He has tried to take law in hands as behaved in a high handed manner and as per the FIR he has even used a knife for intimidation. The charges against the Talati-cum-mantri made in the petition cannot be replied by the panchayat nor can it be looked by this court, according to Mr. Raval, as Talati-cum-Mantri is not made a party. However, so far as the removal of encroachment is concerned, the Talati-cum-Mantri has taken an active part in the process by issuing notice as required. On basis of FIR charge-sheet has been filed by the police and criminal case pending in the court of Judicial Magistrate First Class. The authorities concerned have taken into consideration whether the act alleged in the FIR can be said to be such as would involve moral turpitude and thereafter have come to the conclusion that it did involve moral turpitude and therefore this court cannot interfere with the order passed by the authorities.

Mr. Dave, learned A.G.P., on the other hand has also argued that in light of the decision in the case of BHOGILAL VS. THE DEVELOPMENT COMMISSIONER OF STATE reported in 17 GLR 724 when a complaint is lodged that itself is sufficient to attract provisions of Section 59 of the Gujarat Panchayats Act. In the instant case, the charge-sheet is already filed and therefore this court may not interfere.

It cannot be gainsaid that the ultimate decision on the FIR will have to be taken by the Magistrate concerned and any observation in that regard by this court may have some bearing on that decision. This court is, therefore, consciously restraining itself from making any observation in that regard.

It however is very clear that the relations between the Sarpanch and the Talati-cum-Mantri who lodged the FIR against the Sarpanch were strained. The FIR is lodged and on basis of that after due investigation the investigating agency has filed a charge-sheet and the

criminal case is pending before the Judicial Magistrate First Class. The charges are assaulting on a public servant and criminal intimidation coming from a Sarpanch on Talati-cum-Mantri. These aspects have been taken into consideration by both the authorities below namely the District Development Officer and the Development Commissioner and in their view the act on the part of the petitioner did involve moral turpitude and attracted exercise of power under Section 59 of the Gujarat Panchayats Act. While exercising powers under Article 227 of the Constitution of India after going through the decision of both the authorities, in view of this court, it cannot be said that the decisions arrived at by the authorities below call for any interference as it cannot be considered as illegal, improper or perverse. If the decisions relied on by Mr. Master are taken into consideration the Supreme Court in the case of PAWAN KUMAR VS. STATE OF HARYANA (supra) observed that the court has to be sensitive to the changing perspectives and concepts of morality to appreciate the effect of an act (in that case effect of Section 294 of IPC) on today's society and its standards and its changing view on obscenity. In that very decision the apex court took into consideration the policy of the Government of Haryana wherein what would constitute an offence involving moral turpitude was also taken into consideration. Thus, the said decision does not help the petitioner. So far as the decision in the case of THAKORBHAI BHOGABHAI VS. D.D.O., SURAT (supra) is concerned, it was observed that an act can be considered to be involving moral turpitude if it is found to be immoral or unethical. It was also observed that the words 'involving moral turpitude' give a restrictive meaning. When the authorities below have come to the conclusion that an elected Sarpanch assaults a public served it shocks the conscious of society and it is therefore an act involving moral turpitude. In view of this court, it does not call for any interference as the view cannot be considered as a view which cannot be taken in given situation and therefore this decision will not help the petitioner in any way.

In the decision in the case of NARABHAI V. CHAUDHARY VS. R.S. VAGHELA (supra) a view was taken that there cannot be any straight jacket formula to indicate whether an act would constitute an offence of moral turpitude and it has to be decided in facts and circumstances of each case but the power of suspension in current aggressive politics must be exercised with great circumspection. In that case the offence is alleged against were punishable under Sections 147, 148, 149, 324

504 and 506(2). In the instant case Section 332 of IPC is also involved. Further the decision arrived at by the authorities below cannot be said to be perverse in any manner and therefore does not call for any interference by this court.

Before parting, in the facts and circumstances, since the petitioner is an elected person and his term is running out, it would serve the ends of justice better if the Judicial Magistrate First Class, Jaghadia, is directed to dispose of criminal case No. 481 of 1997 as early as possible.

The petition therefore is found to be devoid of merit and merits dismissal. The petition is therefore dismissed. Notice is discharged. No order as to costs.

(A.L. DAVE, J)

[pkn]